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No. 97-59

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ANTHONY DE MEO,

Petitioner,

v.

SMITH BARNEY, INC., TRAVELERS GROUP, INC. and TONI ELLIOTT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI OR, IN THE ALTERNATIVE, A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly dismissed, for lack of appellate jurisdiction, an appeal from an interlocutory order granting the defendants' motion to compel arbitration and stay litigation in an action seeking damages for alleged employment discrimination.

LIST OF PARTIES TO THIS PROCEEDING

The parties to this proceeding are Petitioner Anthony De Meo and Respondents Smith Barney, Inc., Travelers Group, Inc. (incorrectly named in the Petition as The Travelers, Inc.), and Toni Elliott. With respect to the two corporate parties, the parent of Smith Barney Inc. is Smith Barney Holdings Inc., which is a wholly-owned subsidiary of Travelers Group Inc.

All subsidiaries of Smith Barney Inc. are wholly owned.

The following are the direct or indirect subsidiaries of Travelers Group Inc. that are not wholly owned by Travelers Group Inc. (Two wholly owned subsidiaries of Travelers Group Inc. each own 50% of the voting securities of the entities marked with an asterisk.)

La Metropole S.A.
Copeland Associates Agency of Ohio, Inc.
Copeland Benefits Management Company
Travelers Group Investment Management, LLC*
Primerica Financial Services Ltd.
Travelers Property Casualty Corp.
- Travelers Casualty and Surety Company
- AE Development Group, Inc.
- Aetna Casualty & Surety Company of Canada
- Aetna Information Services Inc.
- Aetna National Accounts U.K. Limited
- Charter Oak Services Corporation
- Farmington Casualty Company
- Farmington Management Inc.
- Travelers Casualty and Surety Company of America
- Travelers Casualty and Surety Company of Illinois
- Travelers Casualty Company of Connecticut
- Travelers Commercial Insurance Company
- Travelers Excess and Surplus Lines Company
- Travelers Lloyds of Texas Insurance Company
- Urban Diversified Properties, Inc.

The Standard Fire Insurance Company
AE Properties, Inc.
Community Rehabilitation Investment Corporation
The Automobile Insurance Company of Hartford, Connecticut
TravCal Secure Insurance Company
TravCal Indemnity Company
Travelers Personal Security Insurance Company
Travelers Property Casualty Insurance Company
Travelers Property Casualty Insurance Company of Illinois
The Travelers Indemnity Company
Commercial Insurance Resources, Inc.
Gulf Insurance Company
Atlantic Insurance Company
Gulf Risk Services, Inc.
Gulf Underwriters Insurance Company
Select Insurance Company
Countersignature Agency, Inc.
First Floridian Auto and Home Insurance Company
First Trenton Indemnity Company
Red Oak Insurance Company
Lararnia Insurance Agency, Inc.
Secure Affinity Agency, Inc.
The Charter Oak Fire Insurance Company
The Parker Realty and Insurance Agency, Inc.
The Phoenix Insurance Company
Constitution State Service Company
The Travelers Indemnity Company of America
The Travelers Indemnity Company of Connecticut
The Travelers Indemnity Company of Illinois
The Premier Insurance Company of Massachusetts
The Travelers Home and Marine Insurance Company
The Travelers Indemnity Company of Missouri
The Travelers Lloyds Insurance Company

The Travelers Marine Corporation
TI Home Mortgage Brokerage, Inc.
TravCo Insurance Company
Travelers Bond Investments, Inc.
Travelers General Agency of Hawaii, Inc.
Travelers Medical Management Services Inc.
Travelers Specialty Property Casualty Company, Inc.
Commercial Credit Services do Brazil Ltda.
Smith Barney Private Trust Company (Cayman) Limited*
Greenwich (Cayman) I Limited*
Greenwich (Cayman) II Limited*
Greenwich (Cayman) III Limited*
Smith Barney Credit Services (Cayman) Ltd.*
Smith Barney Commercial Corporation Asia Limited
Smith Barney Securities Investment Consulting Co. Ltd.

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS AND ORDERS BELOW

The orders of the court of appeals dismissing Petitioner's appeal (Pet. App. 5a–7a) and denying his petition for a writ of mandamus (Pet. App. 3a–4a) are unreported. The order of the district court compelling arbitration and staying the litigation (Pet. App. 20a–24a) is also unreported.

BASIS FOR JURISDICTION

The order of the court of appeals was issued on April 8, 1997. The petition for a writ of certiorari was filed on July 7,

1997. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1) and 1651(a).

STATUTES INVOLVED

The verbatim text of the Federal Arbitration Act, 9 U.S.C. §§ 1–16, and 28 U.S.C. § 1291 are set out in the Appendix hereto.

STATEMENT OF THE CASE

In August 1995, Petitioner commenced an action against Respondents in the United States District Court for the Southern District of New York, alleging that his employment was terminated on the basis of his age. He sought compensatory and punitive damages and other relief pursuant to federal, state and local age discrimination laws. Pet. App. 42a–51a.

Respondents answered the complaint, denying the material allegations therein and raising as an affirmative defense that Petitioner's claims were subject to compulsory arbitration pursuant to a written arbitration agreement. On November 2, 1995, after Petitioner rejected Respondents' demand for arbitration, Respondents filed a Motion to Compel Arbitration and Stay Litigation pursuant to sections 3 and 4 of the Federal Arbitration Act, 9 U.S.C. §§ 3–4 (the "FAA"). Respondents contended that Petitioner was a party to a valid and enforceable arbitration agreement with the New York Stock Exchange, Inc. ("NYSE"), which required that he submit to arbitration any claims arising out of his employment or the termination of his employment with Smith Barney.

After allowing Petitioner to conduct discovery directed solely to the pending motion, the district court ordered Petitioner to submit papers in opposition to the motion. Petitioner did not do so. Instead, he filed a cross-motion, pursuant to section 4 of the FAA, requesting a jury trial to determine whether his age discrimination claims were covered by a valid written arbitration agreement. He also sought further discovery for purposes of the jury trial.

On December 2, 1996, the district court granted Respondents' motion to compel arbitration and denied Petitioner's

cross-motion, finding sufficient evidence in the record to determine that Petitioner was a party to a valid agreement to arbitrate his age discrimination claims. The court directed the parties to arbitrate but retained jurisdiction over the case, ordering the parties to inform it of the status of the arbitration by May 20, 1997. Pet. App. 20a–24a.

Despite the interlocutory nature of the district court's order, Petitioner filed a Notice of Appeal on December 12, 1996. Respondents moved to dismiss the appeal, arguing that the court of appeals lacked jurisdiction under 28 U.S.C. § 1291 and the FAA because the district court's order was not "final" and was therefore not appealable. Petitioner filed a cross-motion seeking a writ of mandamus.

After hearing oral argument, the court on April 8, 1997 granted the motion to dismiss and denied the cross-motion for a writ of mandamus. Pet. App. 3a–7a. Petitioner filed the instant petition on July 7, 1997.

ARGUMENT

The FAA embodies a strong federal policy in favor of arbitration. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985). In furtherance of that policy, the statute prohibits appeals of interlocutory orders, such as the order issued by the district court in this case, granting a defendant's motion to compel arbitration and stay litigation. The courts of appeals have been unanimous in reaching that same conclusion. Ignoring the jurisdictional issue that was the basis for the appeals court's dismissal, Petitioner instead raises a variety of arguments opposing the district court's arbitration order on the merits. He makes no attempt to demonstrate that the issues presented by the dismissal of his appeal warrant this Court's review on certiorari; he does not even suggest that the court dismissed his appeal in error. Accordingly, the Petition should be denied.

The federal courts of appeals have jurisdiction to review "final decisions of the district courts of the United States." 28 U.S.C. § 1291. An order is considered "final" for purposes of appellate jurisdiction if it "ends the litigation on the merits

and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). Section 16 of the FAA reiterates these principles in the specific context of arbitration. It expressly prohibits immediate review of an interlocutory order compelling arbitration unless the order is certified for appeal under 28 U.S.C. § 1292(b), and permits immediate review only in specific circumstances not applicable here. 9 U.S.C. § 16. In enacting that provision, Congress intended, consistent with the strong federal policy favoring arbitration, to "make clear that any order favoring litigation over arbitration is immediately appealable and any order favoring arbitration over litigation is not." *Harrison v. Nissan Motor Corp.*, 111 F.3d 343, 348 (3d Cir. 1997) (quoting *Ballay v. Legg Mason Wood Walker, Inc.*, 878 F.2d 729, 732 (3d Cir. 1989)) (alteration in original).[1]

The courts interpreting section 16 have uniformly held that a decision compelling arbitration may be appealed only in "independent" proceedings -- those where the *plaintiff* brings an action to compel arbitration, such that the only issue for decision is whether arbitration should be compelled and the court's resolution of that question is a "final decision" for purposes of section 1291. In contrast, the instant litigation is an "embedded" proceeding -- where the *defendant* brings a motion to compel arbitration in response to the plaintiff's initiation of proceedings in court. In "embedded" proceedings, the court's interlocutory decision to compel arbitration is not "final" because the parties retain the ability to litigate issues of arbitrability at a later time. The court of appeals explained

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[1] The provision of the FAA regarding appeals was added to the statute in 1988. The House Report accompanying that provision states that, under the new statute, "interlocutory appeals are provided for when a trial court rejects a contention that a dispute is arbitrable under an agreement of the parties and instead requires the parties to litigate. In contrast, interlocutory appeals are specifically prohibited in new section 15 when the trial court finds that the parties have agreed to arbitrate and that the dispute comes within the arbitration agreement." H.R. Rep. No. 100-889 at 37, *reprinted in* 1988 U.S.C.C.A.N. 5982, 5997. (This provision was denominated as section 15 when it was enacted, but later became section 16 after a 1990 amendment. See Pub. L. No. 101-650, § 325(a)(1), 104 Stat. 5120.)

the difference between "embedded" and "independent" proceedings as follows:

> If the suit is "independent," *i.e.*, the plaintiff seeks an order compelling or prohibiting arbitration or a declaration that a dispute is arbitrable or not arbitrable, and no party seeks any other relief, a final judgment ending such litigation is appealable at once. If arbitration has been ordered, the objecting party need not await the outcome of the arbitration before challenging the order to arbitrate.
>
> If the suit is "embedded," i.e., a party has sought some relief other than an order requiring or prohibiting arbitration (typically some relief concerning the merits of the allegedly arbitrable dispute), orders denying arbitration are immediately appealable, *but orders directing arbitration are not immediately appealable. In the latter circumstance, the party opposing arbitration cannot challenge the arbitration requirement until the arbitration has occurred and its result is available for challenge on a motion to confirm or vacate the award.* In effect, the pro-arbitration tilt of the [FAA] requires that, with respect to embedded actions, the party opposing arbitration must bear the initial consequence of an erroneous district court decision requiring arbitration.

Filanto, S.P.A. v. Chilewich Int'l Corp., 984 F.2d 58, 60–61 (2d Cir. 1993) (emphasis added) (citations omitted). "Since a court retains jurisdiction over the parties to an embedded proceeding while they arbitrate a discrete portion of their dispute, it is logical to delay an appeal of a ruling compelling arbitration until the court subsequently confirms or rejects the arbitrator's decision." *In re Chung*, 943 F.2d 225, 228 (2d Cir. 1991) (internal citations omitted).

All other courts of appeals to address this issue have applied the same analysis. *See, e.g.*, *In Re Pisgah Contractors, Inc.*, 117 F.3d 133 (4th Cir. 1997) ("Even where a district court's order compelling arbitration compels the arbitration of

all substantive claims involved in the dispute, that order is not 'final' for purposes of appealability, unless the only issue before the district court was whether an order directing arbitration should be issued or not."); *Altman Nursing, Inc. v. Clay Capital Corp.*, 84 F.3d 769, 770–71 (5th Cir. 1996) ("An order involving an embedded proceeding is always an interlocutory order; an order involving an independent claim is always final."); *Adair Bus Sales, Inc. v. Blue Bird Corp.*, 25 F.3d 953, 955 (10th Cir. 1994) ("an order does not constitute a final decision, and is not immediately reviewable on appeal, if . . . relief other than a determination as to the arbitrability of the dispute is sought"); *Gammaro v. Thorp Consumer Discount Co.*, 15 F.3d 93, 95 (8th Cir. 1994) (where plaintiff brought a putative class action alleging violations of federal and state law, and defendant responded by moving to compel arbitration, the case "is a typical example of an embedded proceeding" where an interlocutory appeal is precluded); *Perera v. Siegel Trading Co.*, 951 F.2d 780, 785 (7th Cir. 1992) (orders compelling arbitration are "final if arbitration is the sole issue before the court and interlocutory if raised in an embedded proceeding").

In contrast, courts have allowed appeals from arbitrability determinations only when such determinations end the litigation in its entirety. *See, e.g.*, *North River Ins. Co. v. Philadelphia Reinsurance Corp.*, 63 F.3d 160, 163–64 (2d Cir. 1995) (proceeding was "independent" where plaintiff initiated the litigation solely to compel arbitration and no party sought other relief), *cert. denied*, 116 S. Ct. 1289 (1996); *Prudential Ins. Co. v. Lai*, 42 F.3d 1299, 1301–02 (9th Cir. 1994) (proceeding was "independent" because initial claim for relief was brought in state court and defendant brought separate federal court action to compel arbitration), *cert. denied*, 116 S. Ct. 61 (1995); *Arnold v. Arnold Corp.*, 920 F.2d 1269, 1275 (6th Cir. 1990) (order compelling arbitration was appealable because district court did not stay the litigation and retain jurisdiction but dismissed the complaint in its entirety).

The distinction between "embedded" and "independent" proceedings is determinative in this case. Petitioner commenced the litigation by filing a complaint seeking relief for

alleged violations of the age discrimination laws. After raising Petitioner's arbitration agreement as an affirmative defense, Respondents then moved for an order compelling arbitration and staying litigation under sections 3 and 4 of the FAA. Under these circumstances, the district court's order granting Respondents' motion was not subject to immediate appellate review. The court of appeals correctly determined that it lacked jurisdiction over Petitioner's appeal under section 1291 and the FAA because an order staying litigation pending arbitration is not an appealable final order.

Petitioner presents no argument on the threshold issue of appellate jurisdiction. Instead, as he did below, Petitioner makes arguments only as to the enforceability of the arbitration agreement itself. Those arguments have nothing to do with the issue currently presented by this case: whether an interlocutory order compelling arbitration in an embedded proceeding is immediately appealable.[2] The law is unequivocal that in circumstances such as these, where the district court has rejected such arguments, directed the parties to arbitrate, and stayed the litigation, the plaintiff may raise the arguments anew only in post-arbitration proceedings to confirm or vacate the award.

Petitioner also has no right to immediate appellate review of that part of the Order which denied his cross-motion, pursuant to section 4 of the FAA, for a jury trial to determine whether a valid arbitration agreement existed and for an order granting Petitioner additional time to conduct discovery. The determination of whether the parties have agreed to arbitrate must be made in connection with any motion to compel

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[2] Petitioner argues that the courts of appeals are divided over the issue of when an agreement to arbitrate is sufficiently voluntary and that the Equal Employment Opportunity Commission opposes mandatory arbitration, *see* Pet. 5–7; that the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), precludes mandatory arbitration with respect to older workers, *see id.* 7–13; and that mandatory arbitration violates the Seventh Amendment, *see id.* 13–15. These issues relate to the enforceability of the arbitration agreement in the first place, not to the jurisdiction of the court of appeals over an interlocutory order compelling arbitration.

arbitration under the FAA. *See* 9 U.S.C. §§ 2–4; *Bird v. Shearson Lehman/American Express, Inc.*, 926 F.2d 116, 118 (2d Cir.), *cert. denied*, 501 U.S. 1251 (1991). Since an order staying litigation pending arbitration is interlocutory and not immediately appealable under the FAA, any finding made by the district court in the course of reaching that result (*e.g.*, that a valid arbitration agreement exists) is not a "final" order entitled to immediate appellate review. *See* 9 U.S.C. § 16. Otherwise, as the court of appeals recognized, *see* Pet. App. 13a–17a, every party opposing a motion to compel arbitration and stay litigation would perfunctorily deny the existence of the arbitration agreement and request a jury trial in order to circumvent the FAA's bar on piecemeal appeals.[3]

Finally, Petitioner's alternative request for a writ of mandamus is no different from the foregoing and should be denied. His Petition offers no argument in support of the request: he does not contend that the court of appeals even erred in dismissing his appeal, let alone suggest that, in doing so, the court so exceeded its authority as to justify the extraordinary remedy of mandamus. *See* Sup. Ct. R. 20.1. Nor did Petitioner follow the procedural requirements governing a request for such a writ in this Court. *See* Sup. Ct. R. 20.2, 20.3.

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[3] There is no automatic entitlement to a jury trial on this issue under section 4 of the FAA. *See, e.g., Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 129–30 (2d Cir.), *pet'n for cert. filed*, 66 U.S.L.W. 3108 (U.S. July 22, 1997); *Doctor's Assocs., Inc. v. Jabush*, *89* F.3d 109, 113 (2d Cir. 1996). Petitioner had the burden of establishing a genuine triable issue of fact with respect to the existence of the arbitration agreement. *Distajo*, 107 F.3d at 129–30. Once the district court held that no such issue existed, section 16 of the FAA expressly precluded an immediate appeal and required Petitioner to await completion of the arbitration proceedings.

CONCLUSION

The petition for a writ of certiorari or in the alternative for a writ of mandamus should be denied.

Respectfully submitted,

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September 8, 1997

APPENDIX

APPENDIX OF STATUTORY TEXT

28 U.S.C. § 1291 Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

9 U.S.C. § 1 "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

9 U.S.C. § 2 Validity, irrevocability and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an

existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 3 Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 4 Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof, hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration

agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

9 U.S.C. § 5 Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

9 U.S.C. § 6 Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

9 U.S.C. § 7 Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

9 U.S.C. § 8 Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justifiable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

9 U.S.C. § 9 Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to

the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S.C. § 10 Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and

definite award upon the subject matter submitted was not made.

(5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

9 U.S.C. § 11 Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration--

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9 U.S.C. § 12 Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the

adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

9 U.S.C. § 13 Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

9 U.S.C. § 14 Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

9 U.S.C. § 15 Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

9 U.S.C. §16 Appeals

(a) An appeal may be taken from--

(1) an order--

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order--

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.